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Attorneys for Defendants

IMAGE RENT A CAR INC. and VAN RENTAL CO., INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DIGBY ADLER GROUP LLC d/b/a
BANDAGO, a California limited liability
Company,

Plaintiff,

vs.

IMAGE RENT A CAR, INC., a New York
Corporation, and **VAN RENTAL CO.,
INC.**, a NEW YORK corporation,

Defendants.

Case No. 3:10-cv-00617-SC

**DECLARATION IN FURTHER
SUPPORT OF DEFENDANTS'
MOTION TO ENLARGE THE TIME
TO FILE OPPOSITION AND FOR A
CONTINUANCE**

I submit this declaration in further support of Defendants' Motion to Enlarge the Time for Defendants' to file Opposition to the Plaintiff's Motion For Leave to Amend the Complaint (the "Motion") and for a Continuance of the Hearing scheduled for March 4, 2011 (the "Hearing").

PLAINTIFF'S MISCONSTRUE DEFENDANTS' APPLICATION

On February 11, 2011 the undersigned attempted to enter into dialogue to obtain a mere two day extension to submit Defendants' opposition or that the parties stipulate to a short continuance of the Hearing.

However, rather than respond, Plaintiff disconnected a call from the undersigned and refused to communicate with this office, Subsequently, my paralegal contacted the court room

1 clerk for the chambers of the Honorable Judge Samuel Conti and enquired when the next available
 2 date would be regarding Plaintiff's Motion. Based on the date he received from the clerk
 3 Defendants' requested a continuance to April 29, 2011.

4 However, Defendants are only seeking a short enlargement of time to submit Defendants'
 5 Opposition to the Motion or alternatively a one week continuance of the Hearing or the next
 6 available dated thereafter.

7 However, counsel for Plaintiff purposefully avoided this office's communications
 8 regarding the foregoing.
 9

10 **PLAINTIFF'S SCANDALOUS AND FRAUDULENT RESENTATIONS TO THIS COURT**

11 Plaintiff has engaged in a pattern of scandalous and fraudulent representations¹ the most
 12 recent being the unsworn submission of Plaintiff's counsel Jeffrey M. Rosenfeld ("Rosenfeld")
 13 dated February 11, 2010 addressed to this Court. (the "Fallacious Representation").
 14

15 In his Fallacious Representation Rosenfeld falsely alleges that during a telephonic
 16 conference (the "Conference") on February 8, 2008 Judge Zimmerman was "appalled" and
 17 "lambasted" Defendants. Not only is the foregoing false but Rosenfeld conveniently fails to
 18 apprise this court that he did not participate in the Conference.
 19

20 During the Conference² Judge Zimmerman did not indicate that he was appalled nor did he
 21

22 ¹ Plaintiff has fraudulently represented to this Court and the US Patent and Trademark Office that
 23 it rents cars. Counsel for Plaintiff has attempted to communicate with Defendants under the guise
 24 of settlement and under false pretenses leading the undersigned to believe that discovery would be
 25 delayed due to settlement discussions.

26 ² Plaintiff's counsel Karl S. Kronenberger made fraudulent representations and multiple requests
 27 for relief based on his fraudulent representations in a letter of dated November 22, 2010 addressed
 28 to Magistrate Zimmerman. However, the fallacious representation of Mr. Kronenberger was
 simply controverted by the contemporaneous recorded telephonic conference of Plaintiff's counsel
 Karl S. Kronenberger, Jeff Rosenfeld and Levi Huebner counsel for Defendants, held on
 November 18, 2010 pursuant to the Order of the Honorable Magistrate Zimmerman. After, a
 transcript of the call was presented by the undersigned to the Judge Zimmerman he denied all of
 Plaintiff's frivolous requests.

1 lambast the Defendants. However, he did order Plaintiffs to withdraw four Subpoenas dated on or
2 about January 5, 2011 as same simply violated the Federal Rules of Civil Procedure. He also gave
3 Plaintiff's leave to file a motion regarding discovery disagreements between the parties.

4 Rosenfeld's scandalous submission of an alleged order dated nearly three years ago, from
5 an unrelated matter, of a different jurisdiction and court, of which the prejudicial nature of same
6 outweighs its relevancy, should be stricken.

7 The remaining allegations in the Fallacious Representation are simply further
8 misrepresentations of events and the undersigned will not further waste the time of this Court in
9 addressing same.
10

11 **DEFENDANTS HAVE ATTEMPTED IN GOOD FAITH TO RESOLVE THIS ISSUE**
12 **WITH PLAINTIFF**

13 Defendants do not want to waste the time or resources of the Court or the parties with the
14 present application. However, to date Plaintiff has not contacted the undersigned regarding the
15 foregoing.
16

17 I declare under penalty of perjury that the foregoing is true and correct.

18
19 DATED: Brooklyn, NY
20 February 14, 2011

LEVI HUEBNER & ASSOCIATES, PC

/s/ Levi Huebner

21 BY: _____

Levi Huebner

22
23 Attorneys for Defendants
24 IMAGE RENT A CAR INC. and VAN
25 RENTAL CO., INC.
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